

CRIMES AND PUNISHMENT: AN ANALYSIS OF RETALIATION UNDER THE WTO

Robert Lawrence

DISTINGUISHED LECTURE SERIES 20

CONTENTS

FOREWORD

Resolving trade related conflicts is complex because it involves sovereign nations with unequal power. Nevertheless, it is critical that such conflicts are resolved fairly and efficiently. Failure to do so is not only costly to the parties of the conflict, but also to the global trading system itself. In this DLS, Bob Lawrence makes an important contribution to that discussion by examining retaliation under the WTO.

Lawrence evaluates the merits and shortcomings of retaliation, arguing that the current system encourages protection by allowing countries to erect barriers to trade. He further argues that the system may be unfair to smaller countries because they frequently find retaliatory actions against their interest. He advocates, instead, a system of Contingent Liberalization Commitments (CLC), which allow countries to select a liberalization commitment of their choice *a priori*. This proposal has several merits, the most important of which is that it is pro openness.

The importance of the topic and novelty of the proposal stimulated extensive discussion when Lawrence gave his lecture at ECES. Participants noted that making sector specific liberalization commitments is likely to be encountered with resistance at home. They questioned the lack of symmetry between making across-the-board liberalization commitments and compensation for the affected country. They also expressed concern over the potential impact of such a proposal on the sovereignty of nations. Compelling answers to these and other questions are given at the end of this publication, preceded by Lawrence's paper.

Ahmed Galal
Executive Director, ECES
November 2003

تقديم

يعد الفصل في النزاعات التجارية الدولية من الأمور شديدة التعقيد نظرا لأن أطراف هذه النزاعات من الدول ذات السيادة والتي غالبا ما تتمتع بقوى غير متكافئة. ومع ذلك، فإنه من الضروري الفصل في هذه النزاعات بكفاءة وعدالة، خاصة لأن الإخفاق له تكلفة عالية ليس فقط بالنسبة لأطراف النزاع، ولكن للنظام التجاري العالمي ككل. وفي هذا الإصدار من سلسلة المحاضرات المتميزة، يناقش د. روبرت لورانس هذا الموضوع من خلال تحليل الإجراءات الانتقامية في إطار منظمة التجارة العالمية.

وفي إطار تقييمه لمزايا وأوجه القصور في تطبيق الإجراءات الانتقامية، يرى د. لورانس أن النظام الحالي يشجع على الحماية لأنه يسمح للدول بوضع العراقيل أمام التجارة، فضلا عن أنه غير عادل بالنسبة للدول الصغيرة نظرا لأنها غالبا ما تجد اتخاذ هذه الإجراءات ضد مصالحها. وعليه، يقترح د. لورانس اتباع آلية أطلق عليها Contingent Liberalization Commitments، وهو نظام يسمح للدول الأعضاء في المنظمة بتحديد التزامات مسبقة بتحرير تجارتها، وذلك للتقيد بها في حالة انتهاكها لقواعد التجارة. ولهذا الاقتراح عدة مميزات، من أهمهما أنه يؤيد جهود تحرير التجارة عالميا.

وقد أثارت محاضرة د. لورانس والتي نظمها المركز المصري للدراسات الاقتصادية مناقشات مستفيضة نظرا لأهمية كل من الموضوع والاقتراح المطروح. فعلى سبيل المثال، أشار بعض الحاضرين إلى أن تقديم التزامات بتحرير التجارة في قطاعات معينة من المنتظر أن يواجه بالمقاومة من المجموعة التي سوف تتأثر به على المستوى المحلي. كما تساءل آخرون حول عدم الاتساق بين الالتزام بتحرير التجارة إزاء جميع الدول، وبين تعويض الدولة المضارة. كذلك عبر البعض عن قلقهم حيال التأثير المحتمل لهذا الاقتراح على سيادة الدول. ويشتمل هذا الإصدار من سلسلة المحاضرات المتميزة على إجابات وافية عن هذه الأسئلة، وأسئلة أخرى أثيرت خلال الندوة، بالإضافة إلى الورقة التي أعدها د. لورانس حول هذا الموضوع.

أحمد جلال
المدير التنفيذي ومدير البحوث
المركز المصري للدراسات الاقتصادية
نوفمبر ٢٠٠٣

About the Speaker

Robert Lawrence

Albert L. Williams Professor of Trade and Investment,
John F. Kennedy School of Government, Harvard University

Robert Lawrence is the Albert L. Williams Professor of Trade and Investment at the John F. Kennedy School of Government, Harvard University. He is also a senior fellow at the Institute for International Economics and a research associate at the National Bureau of Economic Research. Dr. Lawrence was appointed by President Clinton to serve as a member of his Council of Economic Advisors in 1999. He held the New Century Chair as a nonresident senior fellow at the Brookings Institution and founded and edited the Brookings Trade Forum.

Dr. Lawrence has also been a senior fellow in the Economic Studies Program at Brookings (1983-91), a professorial lecturer at the Johns Hopkins School of Advanced International Studies (1978-81, and an instructor at Yale University (1975) where he received his Ph.D. in economics. He has served as a consultant to the Federal Reserve Bank of New York, the World Bank, the OECD, and UNCTAD. Dr. Lawrence has authored more than 100 papers and articles on topics in the field of international economics, particularly on global integration, trade in the Middle East, and the impact of trade on the labor market. His is also the author of several books on domestic and international economic issues.

PART I
CRIMES AND PUNISHMENT: AN ANALYSIS OF RETALIATION UNDER THE WTO[1]

I. INTRODUCTION

One of the achievements of the Uruguay Round was to introduce a stronger dispute settlement system into the World Trade Organization (WTO). However, this system has become the subject of several controversies. Some of these reflect concerns about globalization and the WTO's role in promoting it; some reflect narrower concerns about the manner in which the WTO Dispute Settlement System operates – in particular, questions relating to the transparency of its proceedings and participation by non-governmental organizations. While these are important issues, in this paper I will adopt a more narrow focus and consider one aspect of the system which is particularly important for smaller countries such as Egypt, the fact that the WTO allows retaliation in the face of violations.

I will first describe some of the concerns that have been raised about retaliation. Then, I will appraise these concerns by considering the rationale for retaliation. Finally, I will present a proposal for reform that would make the current system more equitable and less likely to lead to protection while preserving its essential features.

II. CONCERNS

The WTO was designed to promote freer trade. One of its unique aspects is that it authorizes members to retaliate against violations by raising tariffs. Yet by allowing retaliation as a response to violations, the WTO system could actually undermine its stated goal. The use of a system that allows retaliation through raising trade barriers is inherently risky. If retaliation induces compliance, it can help achieve the organization's goals. But the system could be

[1] This paper draws heavily on the author's forthcoming study *Crimes and Punishments? An Analysis of Retaliation under the WTO*, Washington DC: Institute for International Economics.

counterproductive if it is more powerful in encouraging retaliation than it is in deterring violations.[2] An upward spiral of retaliations could set off a trade war. The danger of increased protection due to such measures has led critics to advocate discontinuing the practice of permitting retaliation by raising trade barriers. Instead, they recommend requiring violators to provide offsetting compensation by lowering other trade barriers and/or paying fines.[3]

Noncompliance. Recent rulings by the WTO against the United States (in the cases of foreign sales corporations (FSC) export subsidies and steel tariffs) and the European Union (in the cases of beef-hormones and bananas) and for their tardiness in coming into compliance with these rulings appear to highlight the failure of the world's largest trading economies to comply with WTO rules.[4] Aside from the damage it does to their credibility when preaching the virtues of free trade to other nations, the behavior of these two large participants calls into question the WTO's ability to enforce a trading system based on rules. If the largest players do not stick to the rules, surely others will feel freer to do likewise. According to Mavroidis (2000), for example, the persistent violations of the agreement suggest that the penalties for non-compliance are inadequate.[5] Accordingly, he and others advocate tougher penalties for noncompliance and strengthening the nature of the legal obligations.

Undermining Sovereignty. Yet tougher penalties would surely enrage critics on both the right and the left such as those who urged the United States to reject the Uruguay Round agreement on the grounds that the Dispute Settlement Understanding already undermines national sovereignty. The recent WTO-authorized retaliations appear to lend credence to this

---

[2] Indeed the US still has 25 percent tariffs on truck imports that date from the "chicken wars" of the 1960s!

[3] According to the Meltzer Commission "If countries do not accept WTO decisions, injured parties have the right to retaliate by putting restrictions on imports from the offending country or region. The injured country then suffers twice – once from the restrictions on its exports, imposed by foreign governments, and again when tariffs or duties raise the domestic cost of the foreign goods selected for retaliation… The Commission proposes that, instead of retaliation, countries guilty of illegal trade practices should pay an annual fine equal to the value of the damages assessed by the panel or provide equivalent trade liberalization." (IFIAC, 2001).

[4] See Pauwelyn (2000) and Brimeyer (2001).

[5] See Mavroidis (2000).

concern. Food safety is a highly contentious issue in the European Union. On several occasions, after extensive debate, the European Union has made the political decision to ban hormone-fed beef. Yet the WTO has deemed this action illegal and authorized the US to make Europe pay a price for its democratically determined choice.

Unfair System. For WTO participants from many smaller countries such as Egypt, the use of the WTO system for retaliation by the world's two largest traders simply underscores the system's inequities. While the WTO is a multilateral organization, its enforcement system relies on bilateral retaliation. Critics contend that this places smaller countries without much market power in a disadvantageous position.[6] Even when authorized to do so, countries such as the Netherlands, Ecuador and Canada have actually not implemented retaliatory responses motivated perhaps by concerns that their actions are likely to be ineffective, that their trading partners might retaliate through trade or other means, or that they could actually do more harm than good. While the WTO may formally preserve equality among its members by applying principles such as decision-making by consensus, and non-discrimination, in reality, dispute settlement based on retaliation makes some members more equal than others. In the end, therefore, the system is based on the persuasion of power rather than the power of persuasion. It is thus inherently discriminatory against smaller economies.[7] Those concerned about this inequity have also supported moves that would make retaliation a response enforced multilaterally.[8] They would also eliminate retaliation as a response in favor of requiring the violating country either to pay monetary fines or to provide a compensating reduction in other trade barriers.[9]

If the critics are correct, responses allowed under the WTO dispute settlement system have serious flaws and need reform. But are these concerns warranted? What should be done about

---

[6] For a discussion see Hudec (2002), Pauwelyn (2000), and Mavroidis (2000).

[7] Another dimension of unfairness relates to the difficulties and costs of bringing cases to the WTO. Developing countries have complained they lack both technical and financial resources to fully participate.

[8] Another idea would be to give countries the ability to trade the right to suspend concessions with third parties.

[9] See Breuss (2002).

them? These are the central questions this analysis explores by considering the conceptual basis for the remedies.

III. An Analysis of Retaliation

The WTO dispute system is controversial, in part, because there are different preconceptions about how a desirable system of trade rules should operate. One relates to the nature of WTO agreements. Should the consequences of violating WTO agreements be similar to those when violating a commercial contract, or should they be like other international treaties? Prominent legal scholars can be found on either side of this debate. The "contract" view suggests that violations should be viewed in the same vain as contract breaches – i.e., as matters of concern between particular pairs or groups of members. Such breaches may require compensation, but in any case, all are best resolved between the parties concerned. To be sure, the need to pay compensation provides an incentive for compliance but compliance at all costs is not desirable, indeed breaches may be both efficient and desirable. The "treaty" view, by contrast, suggests that violations should be seen primarily as deviations from obligatory commitments against the community at large. Absent an abrogation of the agreement, or withdrawal from the WTO, these are obligations that must be met. A related question addresses the purpose of remedies. Should allowed responses for WTO violations (such as the provision of compensation or retaliation through the suspension of concessions) be designed principally to induce compliance, provide compensation, permit legal breach or simply to maintain reciprocity? Those who see the system as a contract tend to downplay the importance of inducing compliance through punishment and emphasize the roles of providing compensation and providing a safety valve. Those who see it as a treaty or code of laws emphasize inducing compliance. Let us now consider how the system actually operates and assess the degree to which it complies with these different views.

The preamble to the agreement establishing the WTO lists the goals of parties to the agreement. These include "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services." It notes the parties' desire to achieve these goals "by entering

into *reciprocal and mutually advantageous* arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations" *(italics added)*. Thus, WTO agreements are presumed to result from countries making concessions on a reciprocal basis. This presumption lies at the heart of what I shall term the WTO paradigm, a crucial notion that guides both agreements and dispute settlements.

Concessions. A central concept in the WTO is that when a country agrees to reduce a trade barrier it is making a concession. Article 2 of the GATT for example is not entitled "Schedules of Tariff Reductions" but rather "Schedules of Concessions." This idea is fundamental to how the WTO operates. Since reducing import barriers will generally increase national welfare, economists sometimes scoff at the notion of a concession. Why should a measure that is in the nation's interest and should, in any case, be adopted unilaterally be considered a concession?

Some see this talk of concessions as a brilliant subterfuge that harnesses mercantilist sentiment in the name of free trade.[10] In this view, as vividly spelled out by Krugman (1997), the WTO tacitly accepts the naïve (and incorrect) notion that "exports are good" and "imports are bad" and therefore treats measures that increase imports as concessions. Economists sometimes rationalize playing along with mercantilist views when they see these serving a greater good. But their deeply held view that this perspective is fundamentally misguided sometimes leads economists not to take certain elements in the WTO system very seriously. In particular, the idea that trade liberalization entails a concession and the idea that retaliation could actually operate as a form of compensation for the winner of a trade dispute appear highly questionable.[11]

There are, however, alternative explanations that rest on more solid conceptual grounds. Tariff reductions will improve domestic efficiency, reducing distortions to consumption and

---

[10] Krugman (1997) observes that in GATT-think: "(1) Exports are good; (2) Imports are bad; and (3) Other things equal, an equal increase in imports and exports is good. In other words GATT-think is enlightened mercantilism.

[11] According to Krugman (1997, 115), "If economists are sometimes indulgent toward the mercantilist language of trade negotiations, it is not because they have accepted its intellectual legitimacy but either because they have grown weary of saying the obvious or because they have found that in practice this particular set of bad ideas has led to pretty good results."

production decisions. Under competitive conditions, therefore, if a small country removes tariffs, it will enhance national welfare. However, for countries large enough to affect prices in world markets, the calculation is more complicated because tariff reductions may also worsen a nation's terms of trade. When a large country lowers a tariff barrier it increases demand for the product on world markets. This makes its imports more expensive to the country.[12] Moreover, to pay for these imports and restore balanced trade, the country will have to sell more exports abroad and this could require reducing export prices. These responses will reduce the nation's terms of trade (the ratio of export to import prices) and offset the welfare benefits that occur through the greater efficiency associated with reducing the trade barrier. Thus, countries reducing trade barriers *could* be making "concessions" in the sense of taking actions, which everything else being equal, could reduce their welfare.

Reciprocity. A second key notion in the WTO system is the paradigm that all concessions in the WTO are made on a reciprocal basis.[13] What exactly does "reciprocity" mean? According to Bagwell and Staiger (1997, 37):

"The principle of reciprocity in GATT refers to the 'ideal' of mutual changes in trade policy which bring about changes in the volume of each country's imports that are of equal value to changes in the volume of each country's exports."

Thus, concessions are balanced or reciprocated when they result in equal trade flows. Although it is nowhere defined explicitly, implicitly, reciprocity in the WTO is used in a specific sense. WTO members are not required to completely remove their trade barriers, nor are they generally required to have the same tariff levels, either on average or on specific commodities. Instead, as a result of each negotiation, members are expected to give, in value, the same *new*

---

[12] The domestic price will equal the world price plus the tariff. When tariffs are reduced, the world price will rise but the domestic price paid by consumers will generally fall.

[13] Dam recalls that the Havana Charter emphasized "no Member shall be required to grant unilateral concessions" (Dam, 1970, 58). He later notes "From the formal legal principle that a country need make concessions only when other contracting parties offer reciprocal concessions considered to be mutually advantageous has been derived the informal principle that exchanges of concessions must entail reciprocity. Thus while the GATT does not formally require that negotiations produce balanced concessions, it is implicitly assumed that they have done so.

trading opportunities as they receive. This is a system based on what Bhagwati (1991) has termed "first difference" reciprocity. Countries take their initial starting positions as given, and then establish equivalence between the levels of concessions not the overall level of trade barriers.[14]

The principle that countries are not expected to make concessions unless other nations provide them with reciprocal benefits is in harmony with the interpretations of concessions discussed above. From a mercantilist view, if imports are bad, they should only be increased in return for additional exports. In this view, agreements that increase the trade balance are particularly good, while those reducing it are especially bad. If a country obtains an agreement that boosts its trade balance, others must be experiencing declines. However, a system that preserves balanced trade is more plausibly fair for all.

From an economic standpoint, reciprocity takes care of the terms-of-trade problem that large countries face when liberalizing unilaterally. As Bagwell and Staiger (1997) have emphasized in a model with two large countries, world relative prices will remain unchanged if the value of increased sales of imports due to an agreement is offset by an equal value of exports.[15] Thus, negotiations based on reciprocity allow countries to set their tariffs in a manner that is desirable from a domestic viewpoint without having to worry about their terms of trade.[16]

However, basing negotiations on reciprocity also has a downside for some countries. With reciprocity what nations receive is determined by what they give. It is therefore no surprise that the most significant progress in reducing trade barriers has been in the products that are of concern to the developed countries i.e., tariffs on industrial products. In contrast, barriers remain

---

[14] Ironically, the idea that agreements are supposed to be balanced does not stop politicians from implying that they will boost aggregate employment and create jobs!

[15] Bagwell and Staiger (1997) show that if two countries act independently, and take each other's tariffs as given, they will reach a Nash equilibrium that is not Pareto optimal. Each is reluctant to liberalize further because it will be hurt by the associated decline in its terms of trade. However, in a cooperative negotiation based on reciprocity, each can be sure that its trading partner's actions will keep the terms of trade constant. This allows both countries to liberalize further and they will achieve agreement that *is* Pareto optimal.

[16] If countries are simply maximizing domestic welfare they would then move to free trade. If, for political reasons, they apply different weights to output, they may prefer to have tariffs.

significant in the agriculture, textiles and other labor-intensive manufactures that are produced by developing countries.[17]

Violations. If a defendant is found to have nullified its commitments, the agreement would no longer provide reciprocal benefits. How could the agreement be re-balanced? There are three ways: (1) The defendant could eliminate the regulation and come into compliance with the agreement; (2) The defendant could grant the plaintiff another concession (compensation), or (3) The plaintiff could withdraw concessions to the defendant (suspension of concession).

The first solution, having the defendant comply with the agreement is the outcome sought by the WTO. As noted in Article 3.7 of the Dispute Settlement Understanding (DSU): “A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred.” If, however, immediate withdrawal of the offending measure is “impracticable,” compensation (in the form of other concessions) can be provided. “The last resort …is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other member.”

Article 22 of the DSU emphasizes however: “Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However neither compensation nor the suspension of concessions is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements.”

How well do the remedies provided in the WTO system meet the goals that participants generally ask of it? In particular, how successful is it as a means for inducing compliance, providing compensation, affording an escape clause or safety valve, and maintaining reciprocity? All four of these goals may be desirable in practice and any system that could simultaneously

[17] To be sure, the failure to liberalize these sectors reflects the domestic strength of protectionist forces in developed countries in addition to the reluctance of developing countries to negotiate.

achieve them all would be particularly successful.[18] However, generally, to hit all four targets, you need an equal number of instruments. If you have just one instrument, unless the targets just happened to be aligned in a particular way, some compromises may have to be made. Similarly, some trade-offs may have to be made if one mechanism – re-balancing concessions – is used to accomplish all these tasks. In addition, the instruments that are practicable and available in an international setting are different from those that might be feasible domestically: there are other constraints when the parties are sovereign governments, WTO rulings have no direct legal effect on domestic laws, and force cannot be used to ensure remedies are implemented.

It should not be surprising, therefore, that several of these goals are not completely achieved.[19] Nonetheless, rebalancing concessions in response to violations helps to improve compliance, mitigate some of the costs that violators impose on other countries, provide a legal mechanism to permit at least temporary breach of WTO rules, and help ensure that reciprocity is maintained. But it does not compel (or assure) compliance. Nor does it fully compensate other countries for their losses. Its role as an escape clause remains controversial, and it maintains reciprocity fairly imprecisely and sometimes only with considerable delay.

Compliance. Economic theory suggests that rebalancing through the suspension of concessions eliminates the encouragement the WTO system might otherwise provide to large countries to engage in violations that improved their terms of trade. But rebalancing does not necessarily *punish* violations, and theory also predicts that if the internal benefits outweigh the

---

[18] Here the analogy with a contract is useful in clarifying the discussion about the purpose of WTO remedies. When parties breach a contract they are generally required to provide compensation. This requirement actually accomplishes three tasks *simultaneously*. It provides an incentive for compliance by the promisor; it provides compensation to the promisee in the event of breach; and it also permits breach by the promisor if circumstances warrant.

[19] Jackson (1969, 169) provides some interesting historical insights that ambivalence about the purpose of the remedies has always been present. He notes "As one surveys the preparatory work as a whole the impression develops that the draftsmen of GATT Articles XXII and XXIII had several different goals in mind and it is not clear that these goals were consistent."

costs, countries will violate the agreement, a practice WTO remedies do not apparently discourage.[20]

Suppose, for example, a tenant rents an apartment on a month to month basis (without making a security deposit) and then fails to keep up on the rent payments. The landlord responds by evicting the tenant. Has the tenant been subject to a *punitive* sanction? No, the landlord and tenant have both taken actions with equivalent value. It's simply that the arrangement has collapsed, and the landlord has been able to restore the *status quo ante*. To be sure, the tenant is more likely to pay the rent knowing that eviction is an option so the threat of eviction does help induce compliance. But eviction is clearly not a guaranteed method of ensuring compliance and the tenant may well prefer eviction to paying the rent.

The WTO's "suspension of concessions" operates in a similar fashion. It has the effect of restoring the balance of concessions that existed prior to the adoption of the rule (or agreement) that has been nullified. It does not entail punishment, particularly when trade flows of similar value are assumed to be equivalent. Indeed, WTO language never speaks of sanctions or penalties. It describes retaliation simply as the "suspension of concessions." Moreover, it restricts the value of trade eliminated by suspension to the value of trade nullified by the violation, an amount implicitly equal to the trade value of concessions initially provided by the plaintiff.

In calculating whether or not to defect in a system without any retaliation at all, a country might only weigh the benefits and costs defection would have *on itself*. One of the costs is the impact of the higher trade barriers on the efficiency of resource allocation. Another is the

---

[20] In his study of the preparatory work on Articles XXII and XXIII Jackson (1969) notes, "It was clear that the draftsmen had in mind that Article XXIII would play an important role in obtaining compliance with the GATT obligations. The customary international law analogy of *retorsion* was used but throughout the various drafting sessions, there seems to have been some conflict as to the nature of the role that Article XXIII should play, particularly with respect to whether the "suspension" provisions should be limited to the equivalence of the damage done by the action of an offending state or whether they authorized more extensive suspensions in the nature of a sanction…In some statements draftsmen suggested the need for "more rigorous retorsion" if the offending action is "abusive." However, Jackson (1969) also makes other statements to the effect that measures under the article were not "sanctions" and were not "punitive," p. 170.

damage that defection will inflict on the country's reputation – which could make other WTO members less likely to provide it with concessions in the future and which could do more diffuse damage to its international relations in general. Included in the benefits would be the perceived (political) advantages of raising trade barriers and shifting resource allocation toward favored domestic constituents.[21] On the benefit side, for a large country there could also be an improvement in the violator's terms of trade. This would provide *an added incentive* to commit the violation. If suspending concessions were not allowed, the system could reward violators at the expense of members that adhere to their commitments. This could actually *encourage* violations. To offset such a loss in its the terms of trade, the plaintiff member would have to respond with tariff hikes of its own in a manner that reduced its imports by the same volume as its export loss valued at the original world prices. This is precisely the amount of retaliation that WTO rebalancing allows. As Bagwell and Staiger (1997, 3) show:

"GATT's insistence on reciprocity in this circumstance can guide governments to efficient politically optimal outcomes, since by neutralizing the world-price effects of a government's decision to raise tariffs, reciprocity eliminates the externality that causes governments to make inefficient trade policy choices."

While they may not actually be encouraging defection, the absence of punitive responses renders WTO remedies rather weak instruments for compelling compliance. Indeed, several trade theorists have come to quite negative conclusions about the role of the dispute settlement system in this regard. In models typically used in this literature, low tariff levels can result when tariffs are determined non-cooperatively provided that participants fear that tariff increases will result in retaliatory responses that lead to lower payoffs.[22] In these models, introducing a dispute settlement system which limits and delays punitive responses makes potential retaliation less likely and thus leads to *less* liberalization.[23] As Ethier (2001a, 12) observes: "Trade theory

[21] Countries could have non-economic reasons for preferring more production (or less consumption) of a particular product. See Johnson (1965).

[22] For an excellent survey of this literature see Staiger (1995).

[23] Ludema (1990).

focuses virtually exclusively on punishments as trigger strategies to sustain agreements for significant liberalization. (Since it does not allow for punishment) actual practice is inexplicable from this view."

All in all, it appears that WTO remedies are likely to make some contribution to compliance but the contribution is likely to be modest.[24] When combined with the fact that in practice most members are unlikely to retaliate and that in addition, an extensive period of time could pass prior to retaliation, the system appears particularly poorly designed for this purpose. From some viewpoints however, this is not necessarily a bad feature of the system. In particular, it implies that countries generally will comply only when they believe that compliance is in their interest. This is actually quite a healthy property for a system in which sovereign nations are meant to cooperate.

Compensation? The ability to retaliate in response to a violation by suspending concessions could compensate a country for losses brought about by the impact of the violation in worsening its terms of trade. However, offsetting this benefit would be the losses in efficiency inflicted by the higher tariffs. While a large plaintiff can therefore offset its external (terms of trade) losses, it cannot recoup the internal efficiency benefits it would have enjoyed had there been no violation. In other words, it is not fully compensated for the effects of the violation and in effect the best it can do is to return to the *status quo ante*, the original agreement. Since small countries generally face terms of trade that are fixed, retaliation may provide them with no compensation at all. Responding with increased tariffs of their own will lead to less efficient levels of production and consumption and no offsetting terms of trade improvements. Such countries will be unable to receive any compensation at all.

Safety-Valve. Can a country permanently escape from its obligations by accepting retaliation? Legal scholars are divided over the precise nature of the obligation to comply with the rulings of the Dispute Settlement Body (DSB). The DSU language clearly states that

[24] See Bown (Forthcoming) and Bown (2003) for evidence on how retaliation under the GATT/WTO did affect behavior.

compliance is "preferred." It also states that rebalancing through either compensation or suspension of concessions is meant to be temporary. According to Jackson (1969) therefore, ultimately the obligation to comply is the same as any other binding obligation under international law.[25] Scholars such as Judith Bello, Warren Schwartz and Alan Sykes provide an alternative view. They place more significance in the phrase "compliance is preferred" and argue that it is significant that the phrase "compliance is required" is never used.[26] They also emphasize that although rebalancing is meant to be temporary, there are no specific time limits placed on its exercise.

As an economist who lacks legal training, it lies beyond my competence to choose between the eminent legal authorities on this issue. However, I would note that the practical significance of the argument about an ultimate requirement to comply is relatively small. Although the application of remedies is "intended to be temporary" the practical effect of not providing a firm date for compliance could be to allow the defendant to legally sustain the practice indefinitely.[27]

Why Rebalancing? This review of three possible goals of WTO remedies suggests some roles for each. However, these attributes appear as byproducts of a system that is best explained as an effort to maintain reciprocity through rebalancing. Jackson, in his study of the preparatory work done for the original GATT and ITO, quoted one of the drafters as stating, "what we have really provided, in the last analysis, is not that retaliation should be invited or sanctions invoked, but that a balance of interests, once established, shall be maintained."[28] Similarly, in writing about the original GATT agreement and its responses to violations, Hudec (1993, 7) observed:

"The key value underlying this rather odd legal design was reciprocity. The legal

---

[25] DSU Article 22:9 also states "When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible member shall take such reasonable measures as may be available to it to ensure its observance." This seems to reinforce the principle of a legal obligation to comply. But it also states "The provisions relating to compensation and suspension of concessions or other obligations, apply in cases where it has not been possible to secure such observance."

[26] Schwartz and Sykes (2002).

[27] To be sure, the DSB does monitor uncorrected violations permanently.

[28] Quoted by Charnovitz (2001, 801).

procedures were not there to enforce obligations for the sake of enforcement. They were there to correct imbalances that might arise in the benefits governments were actually receiving from the agreement. It was a diplomat's concept of legal order."

This approach appears desirable when viewed from a mercantilist perspective. If a country reneges on its promise to provide the "good" of more exports for its trading partner, the partner should either be compensated with other exports or be able to protect itself by reducing the "bad" of its imports from that country by an equal amount.

Rebalancing, as we have seen, also accords with the ideas of trade theory. By rebalancing the plaintiff is able to eliminate any deterioration in its terms of trade that might have resulted from the violation of the agreement. Rebalancing therefore ensures that countries make their trade policy on the internal consequences of their decisions and denies them the ability to shift their costs onto their trading partners.

Rebalancing also serves some important political functions by maintaining reciprocity. If producers of exports are hurt as a result of foreign violations, at least import-competing producers can be rewarded by the retaliation. Rebalancing also allows the claimant nation to prevent foreign countries from reaping extra gains from a trade agreement that it violates (an important consideration for realists); and, finally it ensures that the terms of the bargain cannot be abridged unilaterally without consequences. This gives agreements greater credibility. All these elements are important in maintaining political support for the system.

Interdependent Arrangements. It is well recognized in economics that barriers to exit can create barriers to entry. Restrictions on firing workers, for example, can discourage firms from hiring workers. Similarly, penalties discourage countries from agreeing to WTO disciplines in the first place. This is important because one role of the WTO system is to entice the parties to sign as many agreements as possible. As Dam (1970) noted in his classic study of the GATT:

"The GATT has a special interest in seeing that as many agreements for the reduction of tariffs as possible are made. Enforcement of tariff bindings is important...but…a system that made the withdrawal of concessions impossible would tend to discourage the making of

concessions in the first place. *It is better for example, that 100 commitments should be made and that 10 should be withdrawn than that only 50 commitments should be made and all of them kept."*

The WTO system operates by offering parties something similar to a "no lose" or "get your money back" opportunity. If the deal looks beneficial today, you can sign it knowing that at worst, if circumstances change, you cannot be worse off.[29] After all, you will only defect if you think defection makes you better off. However, if your trading partner defects, you will be able to rebalance concessions and at worst, revert to the *status quo ante*, raising your tariffs to their previous level, which is the best you can do given the other side's violation. Even in this case, assuming there are no fixed costs associated with signing the agreement (and no delays in enforcing it) you will not be worse off than you would be without an agreement, because you will have enjoyed benefits until the violation was committed.

On the other hand, suppose that, instead of simply allowing the plaintiff to return to the *status quo ante*, the rules allowed for an additional penalty.[30] This *could* make the breaching party worse off than it was prior to the original agreement. Its terms of trade would end up lower than before the agreement and thus the "externality" from breach would now be negative rather than positive. Assume that, prior to the agreement. The plaintiff had set its tariffs at their optimal level, given the absence of an agreement. If it was then *required* to impose a penalty, it too would be worse off from participating in the agreement. While such penalties might be more effective in inducing compliance, if they fail to do so, *both* parties could be worse off and hence discouraged from entering into the agreement in the first place.

Ethier (2001b, 5) has argued persuasively, therefore, that rebalancing with commensurate responses is an optimal approach when countries negotiating trade agreements are subject to

---

[29] This assumes there are no fixed costs associated with signing the agreement.

[30] Assume that the original negotiations began with a "Nash" equilibrium. Both sides were not cooperating and each side set its tariffs at the optimal level given the tariffs in the other country. In this framework therefore, if the violation restored the defendant's tariff to its original level, in the absence of its WTO commitments, the complainant would respond by raising its tariff back to its original level as well. It would not want to respond with an even higher tariff. Thus, rebalancing accords with the response the defendant would choose on its own.

considerable uncertainty about whether or not they could find themselves out of compliance. "Each country knows that it might turn out to be either the accuser or the accused. Thus it is in no country's interest, *ex ante*, to agree that, *ex post*, either the accuser should be unconstrained in its ability to punish or the accused should be unconstrained in its ability to proceed without punishment." He argues, therefore, that there is a central role in the process of multilateral liberalization for an implicit agreement to allow countries to violate agreed commitments if the violation implies no retreat from reciprocity.[31] He also demonstrates rigorously that a system with commensurate responses to violations leads to an optimal degree of liberalization.

In sum, the ability of plaintiffs to suspend concessions in response to WTO violations accomplishes several goals simultaneously. Above all it permits the plaintiff to maintain reciprocity. In addition, it reduces incentives for non-compliance, it offsets *some* of the losses the plaintiff incurs from the violation, and it may provide a (temporary) "safety-valve" mechanism that permits breach. The system also encourages members to enter into new agreements – indeed it will lead to the optimal amount of liberalization.[32]

The failure to appreciate that each of these considerations plays an important role in the system can lead to misplaced criticism and poor advice. For example, those who claim that WTO retaliations are sanctions forget where WTO agreements come from in the first place. WTO agreements reflect concessions. When countries are found in violation, they have in principle reneged on something for which they received consideration. When plaintiffs retaliate therefore, they are not applying a punishment, but returning to the *status quo ante* the original agreement. Similarly, it is true that smaller countries have greater difficulties in applying retaliation. But in part this is the mirror image of the advantages they could enjoy from free riding in a negotiating system based on the most-favored-nation principle.

---

[31] An important assumption in proving this result is that verdicts are rendered rapidly so no weight is given to the adjudication phase. Lengthening this phase will lead to less liberalization. Ethier (2001b, 20) also derives conditions in which commensurate responses remain optimal.

[32] Ibid.

The introduction to this analysis raised four major concerns about WTO dispute settlement: It has led to more protection, it is ineffective in enforcing compliance, it has undermined national sovereignty (through sanctions and judicial activism) and it is unfair to smaller participants. Are these concerns warranted?

Protection. Retaliation in response to violations under the WTO remains rare. It has only been implemented by one large member (the US) in two cases (beef and bananas) and is now threatened by another large member (the EU in response to FSC-ETI.) Even in these cases, had the previous GATT system been in operation, with the possible exception of the FSC, similar measures would probably have been imposed unilaterally without WTO authorization and oversight. Nonetheless, authorizations of the $4 billion to be given to the EU in response to FSC-ETI are substantial and could seriously disrupt trade. They could also spur escalation. In addition, although they have so far decided not to exercise their rights, other countries (e.g., Ecuador, Canada and Brazil) have been authorized to suspend concessions. It would surely be preferable if the WTO could devise a mechanism that avoided retaliation while remaining as effective as the current system in providing incentives for compliance, a legal escape clause and maintaining reciprocity.

Compliance. Compliance with WTO and GATT rulings has generally been good although it not always been rapid.[33] At times, (e.g., the US-FSC and EU in bananas) countries have made superficial changes in their policies that have not actually brought them into compliance. Nonetheless, upon being found in violation, in every case, members have announced their intention to comply and the preponderance of the cases have been settled. Why is compliance common if retaliation is rare? In some economic models of trade negotiations, compliance depends only on the probability and size of retaliation. But other factors are surely more important. First, there are often important parties within each country that have an interest in compliance (e.g., consumers, exporters and import distributors). Second, even when there is disagreement over a particular case, members come into compliance because they continue to

[33] See Hudec (2002, 82).

believe that overall a trading system based on rules will serve the nation's interest. Third, officials and others value their reputations as rule-abiding participants because of the interests they have in the current agreement and their desire to be taken seriously when negotiating new agreements. Countries are aware that compliance on their part could influence the probability that other countries will comply in the future. They are aware that other members are unlikely to grant politically painful concessions if they have little faith that a negotiating partner will meet its commitments, and fourth, countries generally have ongoing relationships in other spheres. Countries that depend on the United States for aid and defense, for example, might be more willing to comply with findings of disputes in which it is involved.

However, it remains true that compliance is aided by the prospect of retaliation. Moreover, the system should itself not provide incentives for violations by preventing countries from re-balancing concessions in response to violations. Nonetheless, despite all the reasons for compliance, there will inevitably be cases, such as beef-hormones in which a member has preferred to violate the agreement notwithstanding the impact of retaliation and the harm that may be done to its reputation and relationships. In these cases the system's role is to prevent deadlock leading to escalation. In this respect the WTO has generally been successful, although there remain dangers in the current friction between the US and EU.

Sovereignty. Sovereignty is a slippery concept that has been given a variety of meanings and connotations. As Krasner (2001) has argued, the invocation of the notion is often been associated with "organized hypocrisy." One notion of sovereignty that does have a clear meaning is as a synonym for ultimate legal authority. Who has the right to make the rules? In this most meaningful sense, members of the WTO do not yield their sovereignty. The WTO has no power to change domestic laws unless countries themselves give it that power.

Sovereignty has other meanings in addition to the idea of legal authority. One of these refers to the ultimate power, the practical (as opposed to the legal) ability of the state to control behavior. Some states have difficulties in exerting such control domestically – the phenomenon of failed states exemplifies this dimension. But states also have an interest in controlling

behavior beyond their borders. One mechanism for such control is the treaty. Paradoxically, therefore, concluding treaties is an act of sovereignty. By agreeing to constrain its own behavior, the state constrains the behavior of others. The WTO is just such an agreement.

Equity. While a small country could still decide to employ retaliation to try to teach a larger trading partner a lesson and discourage future defections, it will find such actions relatively more costly to undertake than its larger counterparts because it cannot obtain favorable movements in its terms of trade. Smaller countries may also feel more vulnerable to other kinds of political pressures. Since they can do little to improve their terms of trade, economic theory suggests that small countries will on balance reduce their own welfare by suspending concessions. Their limited market power therefore gives the WTO members less capacity to induce compliance through retaliation. This feature of the WTO system is however the mirror image of the advantages smaller countries may enjoy during negotiations from being able to free-ride on the MFN principle and for less developed members, from special and differential treatment. Moreover, with the negotiation of the TRIPs (trade-related intellectual property rights) agreement, developing countries acquired an area in which they are now able to retaliate more effectively. Indeed, in the bananas case, Ecuador requested authorization to retaliate against the European Union by suspending the intellectual property rights of EU exporters.[34]

Despite their disadvantages in threatening retaliation, complaints by developing countries have generally been successful in obtaining compliance – presumably because of the other motivations for compliance mentioned above.[35] Nonetheless, the WTO is a system in which members are supposed to have equal rights, and it would be desirable if the imbalance between small and large countries could be redressed.

In sum, overall the WTO has contributed to liberalization and been effective in establishing a system in which members comply with the rules. It is actually remarkably deferential to national sovereignty and the difficulties smaller members experience in retaliating are the mirror

[34] Despite being granted such authorization, Ecuador chose not to retaliate.

[35] According to Hudec (2002, 82), "Over the GATT's history, out of 22 complaints brought by developing countries

image of the benefits they derive in obtaining concessions. Nonetheless, it is problematic that the WTO authorizes trade retaliation. It is also problematic that the system provides more leverage to large countries than it does to small countries. In the final section, I will propose a new measure that would help mitigate these effects.

IV. An Idea for Reform

Many of the options advocated for reforming the response to violations are flawed. The system accomplishes several functions simultaneously, and most reforms that improve the performance in one dimension worsen it in another. Eliminating re-balancing entirely, for example, would avoid protectionist responses and treat all members equally, but it would reduce incentives for compliance and could lead to violations of reciprocity. More punitive systems or those based on fines might improve compliance. Monetary payments could also avoid protectionist responses and permit more precise forms of compensation, but fines could further threaten sovereignty and be difficult to collect. Confining rebalancing to compensation would avoid protectionist responses, but would be impractical because they require cooperation by the defendant. Requiring retroactive compensation for infractions could reduce incentives for delay but might also discourage countries from assuming new commitments

Contingent Liberalization Commitments. There is another approach that would be more effective in dealing with the problems while preserving the essential character of the system – contingent liberalization commitments (CLCs). In this approach, WTO members would be given the option of offering a pre-authorized compensation mechanism during the Doha Round negotiations. These "security deposit" offers would be included in the multilateral negotiations. If a country's offer is accepted, in the event it is later found to have violated the agreement and failed to come into compliance, winning plaintiffs would be authorized to select an equivalent package of concessions from the defendant's commitments**.** Countries could choose from several options in making their CLC offers. They could indicate a willingness to provide (selective) financial compensation, they could agree to provide across the board (MFN) tariff cuts to

that were based on a valid legal claim, satisfaction was achieved in 18."

generate additional trade equal to the value of the infraction, or they could agree to liberalize certain sectors on an MFN basis. Since the sectors to be covered would be negotiated, in the multilateral setting, countries specialized in particular exports e.g., textiles could form alliances to ensure that products of interest to them would be included in the commitments of important trading partners.

This system would have numerous advantages. For defendant countries with CLCs, the WTO would no longer authorize retrogressive protectionist responses. Compliance incentives would be improved. Countries that are currently unable to effectively threaten retaliation would now have a viable mechanism to exercise their rights to compensation. Pre-announcing sectors in which liberalization might take place or willingness to pay compensation would create domestic constituencies in each country that would lobby for compliance, motivated by the prospects of losing protection, tariff revenue or of having to pay compensation. Unlike a system that simply required compensation with other tariff reductions, this system would not be subject to the difficulties of finding mutually acceptable concessions. This system respects national sovereignty. Unlike a system in which plaintiffs could order the defendant to liberalize particular sectors, this mechanism of pre-selection would not violate the capacity of potential defendants themselves to choose sectors for liberalization. Unlike a system based on fines, the remedy could be internal to the trading system and not require additional budgetary or legislative in defendant nations in which collecting such payments are a problem. Smaller countries would no longer be subject to inequitable treatment. They would be just as able to pursue their interests as their larger counterparts. The system would preserve the essential principles on which the WTO is based. Reciprocity would be maintained: The response to violations would still be a re-balancing of concessions and members would have an acceptable “opt-out” mechanism.

There are other more complex considerations with the CLC approach. Industries named as part of a member’s CLC could be adversely affected simply by the threat of having their protection removed. At the margin this could discourage investment and other forms of expansion in these industries. This might not always be bad. Putting sectors on notice that more

liberalization was possible could facilitate their long adjustment to free trade. In setting up their commitments, members could minimize these effects by spreading the CLCs across many sectors. This strategy would also limit the amount of political gamesmanship that could be played by plaintiffs in designing their retaliation – a more general feature of the CLC system.

Could countries always be sure that defendants' CLCs would contain sectors in which plaintiff exporters were competitive? Probably not. Although most developed countries do have exports in many sectors, some developing countries with highly concentrated exports might not always be able to benefit from exercising their CLC rights. Still, most would be able to, and compared to the current system, in which the ability to retaliate is simply not something most developing countries would resort to, the number of countries able to avail themselves of the system would surely be increased.

In addition, since the liberalization would occur on an MFN basis, plaintiff countries given the right to invoke concessions in a particular sector might use that right in a manner agreed with other members in return for those members providing concessions of interest to the plaintiff.

Developing countries (or perhaps the least developed countries) could also be given the option of requesting special duty free access for their exports up to a certain value. This system of tariff rate quotas would essentially enable them to obtain their compensation through quota rents, rather than increased market access.

There is a valid concern that the requirement of pre-designating CLCs could lead countries to be less willing to liberalize in the first place. This is certainly a possibility. But it needs to be weighed against the danger in current system that retaliation and counter-retaliation in cases that are not resolved could eventually lead to a substantial increase in protection. The more significant this problem becomes, the more attractive a CLC system will become. Indeed, although I have advocated CLCs on a voluntary basis they could also be made mandatory – thereby effectively eliminating retaliation through the suspension of concessions.

The problem of cumulative retaliations could be ameliorated in other ways. One would be netting out. Currently, the US has been authorized, and has retaliated against the EU in the beef

hormones case to the value of $119 million. The EU has been authorized to retaliate in FSC by nearly $4 billion. In the current system, both the US and EU could raise tariffs by the amount authorized. Instead, if the system applied netting out, the EU would simply be authorized to retaliate in the amount of $3.881 billion and the US to eliminate retaliation for EU beef. While this approach is an alternative method of rebalancing and maintaining reciprocity, clearly it could encourage countries to bring cases with a view to buying protection against possible retaliation. It might also weaken the pressures on the EU to comply.

A second method would be essentially to convert retaliation into compensation in the course of the next multilateral round of negotiations. Countries that have failed to come into compliance should be required to submit additional liberalization offers to those countries that have been authorized to retaliate. These offers would be used to obtain waivers that would permit the slate of retaliations to be wiped clean once a new multilateral agreement was signed.

V. Conclusions

The paradigm of reciprocal concessions plays a central role in the WTO system. Many observers, economists in particular, deprecate the notion that WTO members make concessions when they agree to liberalize. They find it hard to take the notions of concessions and reciprocity seriously. However, the notions of concessions and reciprocity are well grounded in economic theory.

In disputes, the WTO employs the principle of reciprocity very precisely in allowing concessions to be "rebalanced" in response to findings of violations. Re-balancing is supposed to be equivalent to the level of "nullification or impairment" caused by the violation.[36]

Upon close examination, the function most clearly achieved by this system is to maintain reciprocity. In addition, however, the system achieves several other goals, *at the same time,*

[36] Strikingly, the retaliatory response to violations resembles the response when members apply safeguards (which do not entail illegal behavior) in several respects: Under the rules, both are selective, temporary and equivalent to the trade impeded. Likewise, retaliation in response to violations is likely to be similar in size to rebalancing when members reschedule their tariff concessions, (although different in that it is permanent and applied on an MFN basis).

although it does so imperfectly. Rebalancing simultaneously provides incentives for compliance. It also may partially compensate the plaintiff for some of the adverse effects that could arise from the violation and it permits a form of breach without further legal consequences for an unspecified period of time. But re-balancing is not properly viewed as a punitive sanction or punishment and it may not succeed in inducing compliance. It does not fully compensate the plaintiff country for the violation and thus may not lead to efficient breach. And, ultimately since retaliation or compensation are meant to be temporary measures only, there remains an obligation to comply.

This WTO method of responding to infractions also helps to encourage members to sign agreements they believe will be beneficial. *Ex post*, members are no worse off than had they not signed the agreement. Re-balancing allows the plaintiff to restore its position prior to the agreement, while the defendant will only persist in its violation if it is made better off. Re-balancing encourages an optimal amount of liberalization when members believe they are as likely to be plaintiffs as they are to be defendants.

The WTO rules actually reflect an amalgam of the contract and treaty views. The language of the DSU makes it clear that members cannot obtain permanent exemptions from their legal obligations simply by accepting retaliation. Retaliation is expected to be temporary. In this sense the rules resemble conventional treaties in which compliance is required. However, while compliance is preferred, it is not required within a specific time limit, and thus in practice, the system provides a mechanism for breach that could be maintained indefinitely.

Retaliation in response to violations under the WTO remains rare. It has only been implemented by one large member (the US) in two cases (beef and bananas) and is now threatened by another large member (the EU in response to FSC-ETI) and compliance with WTO and GATT rulings has generally been good although it has not always been rapid. However, the system does place small countries at a disadvantage. It would be preferable if the WTO could devise a mechanism that avoided retaliation while remaining as effective as the

current system in providing incentives for compliance, a legal escape clause and maintaining reciprocity.

Contingent Liberalization Commitments (CLCs) could improve on the current system while preserving its essential character. As part of the next negotiation round, members would offer to designate sectors or methods for liberalization and/or compensation in the event they failed to comply with DSB findings. Members whose offers are accepted could not then be subject to retaliation. Instead, in the event they fail to comply, these commitments would be activated.

This CLC system would have numerous advantages. The WTO would no longer necessarily authorize retrogressive protectionist responses. Compliance incentives could be improved, particularly for trade in products dominated by countries that currently are unable to effectively threaten retaliation. By pre-announcing sectors in which liberalization might take place, members could create a domestic constituency in each country that would lobby for compliance, motivated by the prospects of losing their protection. Unlike a system that simply required compensation with other tariff reductions, this system would not be subject to the difficulties of finding mutually acceptable concessions. Unlike a system in which plaintiffs could order the defendant to liberalize particular sectors, this mechanism of pre-selection would not violate the capacity of potential defendants themselves to select sectors and/or methods for liberalization. Smaller countries would no longer be subject to inequitable treatment. They would be just as able to pursue their interests as their larger counterparts. The system would preserve the essential principles on which the WTO is based. Reciprocity would be maintained, the response to violations would still be a re-balancing of concessions, and members would still have a temporary "opt-out" mechanism when experiencing compliance difficulties.

PART II: DISCUSSION

CRIMES AND PUNISHMENT: AN ANALYSIS OF RETALIATION UNDER THE WTO

Participants in the discussion following Robert Lawrence's presentation included Ahmed El Dersh, Former Minister of Planning and International Cooperation; Taher Helmy, Partner, Helmy, Hamza and Partners (Baker & McKenzie Law Firm) and ECES Chairman; Gouda Abdel Kaleq, Professor of Economics, Cairo University; Adel Bashai, Professor of International Economics, American University in Cairo; Mohamed Taymour, Chairman, Egyptian Financial Group and ECES Board Member; Mohamed Kassem, Chairman, World Trading Company; and Ahmed Galal, Executive Director, Egyptian Center for Economic Studies. The following is a summary of the discussion.

Moderator: Thank you very much Dr. Lawrence. This is indeed a comprehensive review of the WTO retaliation system. No system is perfect as you pointed out. To try to create a system between different nations of the world with all their varied characteristics is always challenging. It will invariably have some intrinsic fairness, but it will also have shortcomings, especially that the world is now more than ever characterized by "survival of the fittest."

Small economies have fewer chips to play with and the suggestion that you made about contingent liberalization commitments (CLCs) is a very good one. What it does, if I understand it correctly, is to shift away from retaliation by giving countries an opportunity to make prior commitments to liberalize broadly or in certain areas. What I am not sure about is how it would work in practice because in essence a country would have to set a list of sacrifices. A country may, for example, put textiles at the top of the list for liberalization. How are you going to get around saying to the world that these are my least favorite industries and I'm ready to cut their throat if something else doesn't work in the event of violation?

Speaker: Let me respond to two things. Firstly, I think it's fair to say that power is a reality in the world in which we live. But I would suggest that you always have to think about the counterfactual and in my view, having a world trade organization and a system of rules that the most powerful have to adhere to, while not eliminating power completely, has mechanisms of control that are better than a state in which we don't have these rules.

As for your second point, I think it's a really interesting one. In my proposal, each country can decide on the mechanisms it is going to choose. One possibility would be to reduce tariffs across the board, another is to commit to liberalizing particular industries. I get criticisms from both sides. If you single out the textile industry maybe that industry would say that they don't want to be the sacrificial lambs. But other people have said to me, for instance, imagine that you've got a negotiation and that you're actually planning to liberalize the textile industry. In this instance, the industry itself, not wanting liberalization, would rather be in your CLC. So some people say therefore that you're not going to get as much liberalization because CLCs would be a substitute. So I think your point is well taken. Politically, it could be tough to decide how we're going to do it in each country. But I see this as part of the negotiation. It seems to me that this would take place in the context of the broader deals which are being struck. I have in mind that if this liberalization occurs it would be on a most-favored-nation (MFN) basis, it would occur for everyone. If a lot of countries have an interest in seeing liberalization in American textiles, they could come to the US and say 'We know that you can't fully liberalize the textile industry, but we also know that you don't always adhere to the rules. So what we'd like is for you to put your textiles in that package and in return we will put e, f, and g.' So there could be bargaining, trade-offs, even multilateral trade-offs on this basis.

Moderator: I have some difficulties with the idea of who will sit at the bargaining table and negotiate trade agreements. Countries and governments could give away certain professional services without informing or engaging those concerned. It seems to me that one industry could suffer for another industry's violation. Who should make the choice?

Speaker: In economics, free trade under competitive conditions results in benefits to a nation as a whole. However, it also creates winners and losers. How we deal with the losers, how we compensate them – those are the tough questions. Each society will have to address that issue on a case-by-case basis.

Participant: I've enjoyed your presentation tremendously, especially that it combines economics, politics, and a legal framework. You have emphasized the idea of sovereignty and in the US this issue is vital especially when it involves legally binding documents. You said that in the US national laws supercede international laws and commitments. In contrast, if Egypt enters into an international treaty it would supercede the local laws. Under these conditions your system of CLCs implies that what is good for the US is good for the world. That puzzles me a lot.

Speaker: Let me respond to your very interesting comments. Firstly, I was simply describing the way America behaves. Don't interpret my description from my personal views as what should happen. The point about sovereignty is that there is a paradox. For instance, a treaty is a quintessential act of a sovereign country, yet the treaty restricts the freedom of the country that signs it, as does a contract. When I sign a contract I don't give up my freedom, but if I constrain my behavior, I can get the other signatory to constrain theirs, thus, I can be made better off. So actually signing a treaty or joining an international trade organization that is in the national interest, is an act of sovereignty and a way to enhance the welfare of a nation. I don't see that as a contradiction. Now it is undoubtedly true that a country may have to give up some control, but that's the trade off you have to make. Just as when you sign a contract you give up some control.

Regarding your comment about the CLCs, I originally called these LSDs or liberalization security deposits. Then they said that people will say Lawrence was on drugs when he spoke about the LSDs, so they got me to change it. But my idea was that as with contracts, this is a

security deposit. You pre-commit as a country, you're going to implement it as a country, so you could refuse to do it. Nonetheless, you are giving a security deposit so I think it's compatible with contract law. I think you actually see it in domestic contracts – I give someone my deposit and if I don't pay my rent then I lose the deposit. So I see CLCs as quite compatible with the idea of a pre-commitment. Although there is the additional act of actual liberalization and in some sense a country could not only violate but ultimately refuse to go along. However, I don't think such a country would last very long within the WTO.

I do think that among Americans there is the notion of wanting to have their cake and eat it too. We want a system based on rules when they are our rules and when we can control the system. I think that, particularly now, we as Americans need to understand that in order to get some control we need to give up some control. In order to influence the world we cannot impose our will, we need to give up some control, but that's not something that the current administration seems to be enthusiastic about.

Participant: Looking at your conclusions, you say the WTO system retains national sovereignty, advances national interests from mutual constraints, and it enhances legitimacy. Let's take two cases and see if these conclusions apply. Take the case of the US and take the case of Egypt. Maybe I'm willing to buy your conclusion when it comes to the US, because US sovereignty should prevail and you mention that explicitly. But when you take the Egyptian case, I'm not really sure that your conclusions hold because after all this is a power game and if the various parties are not of relative equal size then we're not talking about survival of the fittest, we're talking about survival of the strongest. Can you say with a clear conscious that this is a game about survival of the fittest in the sense of economic efficiency as we economists see it?

Your interesting suggestion of CLCs is appealing actually, but I have some queries about it. How is it really different from a retaliation alternative? How will it be negotiated? Take the US and Egypt again, sitting at the negotiating table, for example. Since CLCs are a contract

arrangement, the Americans would insist on agreeing on each and every item the Egyptians put forth before they sign. So when you take into consideration the tremendous difference in power between the two sides you cannot say that the system respects sovereignty, advances interests and it enhances legitimacy. I see it rather differently.

I have one point about developing countries since we have to speak for their cause in this context. You said that they were not required to reciprocate because they did not actually commit anything up front. But is that really true? If it were, then what is this whole fuss about in the context of the various ministerials? If the US and developed countries go ahead and press the Singapore issues at the negotiating table, then issues of cultural values and ways of living, behavior, are going to be subject to very strict and strenuous negotiations. The question is whose interest does this serve at the end of the day? As an Egyptian, I would like to see Egypt liberalize its trade and I would like to see the US going proportionately the same way. As you know, there is a row in the US about medicine and how it has become out of reach for the Americans. One startling discovery is that foreign medicine is not allowed into the US until further notice. I'd like your thoughts on this.

Speaker: You bring up a lot of points and I can't deal with every one of them, but I'll say this, you present a picture that seems to presume that there must be a winner and a loser in the negotiation. You seem to rule out the possibility that there could be winners on both sides, that this could be a win-win situation. Now I assume that, even though they may have different power positions, when intelligent parties sit down and come up with an agreement and they both think that it looks good, they are the best judges that they are improved by that agreement. Nobody forces any country to sign any agreement. This agreement is adopted by consensus and indeed, in order to launch the Doha Round the Indian trade minister had to be persuaded by others from the developing countries. They put a lot of pressure on him to go along because ultimately he could've stopped the whole thing from going forward. Now, I'm not denying that it is difficult to say no, but it seems to me that at the end of the day countries decide what's in their best interest and if they don't like it then they don't have to sign. So there is going to be a

bargaining process in which power will play a role, but I think that you shouldn't presume that just because one side is more powerful than the other that there couldn't be gains for both.

That also goes to the counterfactual, what should we compare the system against. One possibility is an ideal system where some very wise judges or economists or political scientists, for example, stand up and say this is how the world trading system should operate. That might be one way to do it, but I don't think it's a realistic possibility. Inevitably we're going to have this system or we're going to have a system in which there is going to be bilateral negotiation without a multilateral system. The thing about the WTO is that developing countries form alliances and coalitions and therefore are actually more powerful than countries would be individually. I think that's why so many countries are joining the WTO, not because they see their interests being violated but because they see this as a mechanism by which they can advance their interests. I agree that power cannot be ruled out.

I teach cases at the Kennedy School that tell the story of how the rules on intellectual property were introduced into the WTO and I think one of them tells a very interesting story. The American companies Pfizer and IBM got together and decided it would be a good idea to put intellectual property into the rules of the WTO. So they organized and bargained and got those rules in. But what's interesting is we have a second case – the WTO ministerial declaration on pharmaceuticals, which the US agreed to recently. I think we've seen an effective coalition of developing countries using the mechanism of the WTO in order to advance their interests and they have won in a sense. The pharmaceutical companies were routed at Doha. They say you don't get what you deserve, you get what you negotiate. The developing countries played the game very wisely in order to advance their interests, using the mechanism of the WTO to delay the launch of a round. Without dealing with those pharmaceuticals the US and EU couldn't launch their round. So when I look at the story, I think there is an issue of power but developing countries can also be effective players in an organization such as the WTO.

When it comes to the CLCs, the US will make requests, but they will be in a multilateral context. This is an organization that has a multiplicity of players, so countries can make

demands, but at the end of the day it's done in a multilateral framework with very expansive coalitions. While power hasn't been eliminated, I think it's much more controlled in this system.

Participant: Thank you very much for what I thought was a very comprehensive and important presentation that addresses many issues and reservations about the WTO. Recently, the WTO panel found that the softwood lumber producers in Canada were effectively getting a specific subsidy. The US was very happy as it was put in a position to impose countervailing duties. The US representative described it as a victory for both the US lumber industry and the environment. I want your comment on this decision regarding the sovereignty of the Canadians. Will they feel that their sovereignty was impeded?

Also, what I want to say about the WTO is that the whole concept of free trade in practice is a nebulous concept. To begin with, we're really talking about liberalizing trade not complete free trade. It is also true that negotiations to liberalize trade could be associated with restrictions on trade and subsidies. Finally, the retaliation you talked about could in the end defeat the purpose of liberalization. In my view, the real issues for developing countries are agriculture and textiles. If we meet again in 10 or 20 years from now, believe me Europe and America will still be protecting their agriculture and textiles.

Speaker: The Canadians have a very complicated system in which the lumber producers or the people who actually cut down the trees get the forests for free. They have to cut down a certain amount every year and they can sell it wherever they like. Now it's certainly true that as a sovereign nation Canada can do that. But what Canada wants to do is to take that lumber and sell it in the US. I actually believe, after looking at the details of this case, that this is a subsidy to those people who have been given the forests free of charge and then required to cut it down. As a sovereign country Canada can do that, but as a sovereign country the US, under the rules of the WTO, can put a countervailing duty on it. If the equivalent of the subsidy is $10 a log, the Americans can respond by putting a $10 tariff. We can still have trade but at the same time the system is trying to level the playing field. The Canadians have agreed to a subsidies code which

had certain stipulations, so as a sovereign country they must adhere to the agreement they signed or face the implications which is a countervailing duty.

Participant: I have a comment about your proposals. I think your system may compensate the wrong party. For example, if Egypt decides to use the textile sector as the sacrificial lamb and we have a problem with Japan, a country we don't export any textiles to, how would the Japanese respond?

Speaker: That's a very good question. My system will subtly shift the focus back to the idea that this is a multilateral system. The negotiations are between 140 countries. If multilaterally the parties agree that Egypt could put the textiles as their CLC then the best the Japanese are going to be able to do is to invoke that commitment. The benefits are on an MFN basis. Beforehand there would've been a bargain in which some parties would've said we want the Egyptians to have the textiles as their contingent commitment. But you are absolutely right; it would not necessarily compensate the Japanese.

Participant: Retaliation is only part of the trade remedy in the WTO context. As far as developing countries are concerned, retaliation is not really the main aspect of trade remedies. I think countervailing duties and antidumping are much more relevant to our case. Egypt has used these remedies lately rather intensively and so have other countries. I think shedding more light on the other sorts of remedies would have been quite relevant. My concern about trade remedies in general is their misuse and abuse. Other countries, particularly the US and the EU, are using these trade remedies and have often times misused the leverage that is offered to them by the WTO system. In fact, the US has been challenged many times and more often than not has lost the challenge.

Second, I want to say that the WTO does not enjoy a good reputation in many countries and Egypt is one of them. I'm not in agreement with that, but people think that they are coerced by the big and rich nations, and as a witness to some of these negotiations, I think Egyptians did a wonderful job in Geneva. For instance, take the binding rates that Egypt agreed to during the

Uruguay Round, I think it was higher than the actual rates that Egypt applies, which was wrong technically but that is a fact. The Egyptian negotiator was clever enough to put higher binding rates than the actual rates and no one really looked into them, particularly in textiles. While we had 45 percent duties on fabric the binding rate was 54 percent. Each country, small or large, would put on the table what it wants to agree to; nobody is forcing anybody to do anything.

Your point about CLC I think is intellectually challenging and it reminds me of the term voluntary restraints. A lot of countries opted for voluntary restraints rather than be subject to retaliation by other countries, Japan is one case. If a country puts forward a CLC and they don't adhere to their general commitment, how could they be made to adhere to the CLC?

Speaker: You made many comments and I can't respond to all of them, but let me just respond to a couple. I think your point is well taken on trade remedies. The US has been a frequent violator for the way that it's applying the trade remedy rules. It also goes to the point earlier about the system as having become so complicated from a legal standpoint. If the US, with its sophisticated legal mechanisms has trouble adhering to these complicated rules, imagine what it is like for a typical country to adhere to the rules. Even if they seek to adhere to them, it's difficult because they're so complicated and so ambiguous. One idea that I didn't put out here, but I think it's very important, is that the WTO gets an agreement by consensus and for us to get a consensus we will engage in what is sometimes euphemistically called constructive ambiguity. We will write the rules so that you'll interpret them one way and I'll interpret them another way. That's a good way to get agreement, but it's a very bad way to construct a system of laws that the judges and the judicators can actually interpret with great precision. People with different preconceptions can take a look at the language and come up with totally different and plausible constructions of what the rules say. My sense is that a lot of the violations occur not because countries deliberately want to change things, but because they read the rules differently and genuinely find out to their amazement that what they thought they agreed to isn't what they actually agreed to. Now we need to recognize that these are all features of the system and as a

consequence it seems to me that you want to have ways – safety mechanisms in a sense – which would allow countries to move backwards in this instance.

Regarding your last comment, there's an idea that countries are outlaws trying to avoid rules and if they don't adhere to some rules they won't adhere to others. I actually think that governments are not as in control of affairs as that comment reflects and governments know this. You can fall out of compliance completely by mistake or beyond your control. For instance, take the US and this FSC situation. We provide American exporters with favorable treatment in return for benefits which Americans believed that Europeans got from their territorial tax system. Now, the WTO turns around and says that the US is out of compliance. First, it comes as a big shock to the US because they thought they had a deal with the Europeans and they didn't expect this case to come around. When they try to think about how they're going to fix this, it turns out that if you remove this tax benefit then a huge number of American firms are going to be out of pocket by about $4 billion worth of benefits. So as a government you can either harm those firms or what's more likely is you've got to find a way to compensate them by changing some other tax. When you start to think about how you're going to change the other tax, it turns out there are going to be a lot of collateral beneficiaries, so actually this thing is going to cost you $10 billion. So it has become very, very expensive for you to come into compliance. That's the American story, it's not that the US government doesn't want to come into compliance; it's just that it is very painful to do so.

For the European case of the beef hormones, there are no scientists who will say these hormones are damaging. They feed the beef the hormones in its ear and by the time they slaughter the beef there's no evidence that there are still hormones in the meat. Nonetheless, for Europeans to come into compliance it's politically virtually impossible, not because they're bad boys in a sense, but because in this particular case the political costs outweigh the benefits. That's why I think if a country can choose an area in which it is prepared to liberalize, it will do so and it's unlikely it will lead to an international scuffle.

Participant: I can't help commenting on what the last participant said. He said that Egyptian policymakers were very clever to negotiate low commitments in the WTO, agreeing to a 54 percent average tariff when actual average tariff was 45 percent, implying that protection is good for the country and it is not. So, I'm not really sure that is being clever. I don't know whose interest is being served.

Turning to the lecture, the more I hear what you have to say and put it in a broader context the more I worry. In a previous DLS given by Roger Noll, he talked about "The Internationalization of Regulatory Reform." In the past, the WTO or GATT dealt with a subset of issues that were simpler to deal with and confined to barriers at the border, but as the domain of the WTO expands there will be more and more domestic issues included in the agreement and therefore the conflicts are also going to increase. I think we are in for a really hard time. But this also makes it even more important to address such institutional issues as retaliation and try to find better ways of dealing with them, including simplification.

Turning more closely to the issue of retaliation, I think your proposal of contingent liability commitments is certainly an improvement over retaliation, at least from the perspective of liberalization and free trade. I guess it's a bit problematic in a couple of ways. First, larger countries are likely to take advantage of the system, while smaller countries will refrain from doing so.

The other problem is the question of who is going to benefit. For example, if you are hurting Australia by behaving in a certain way and your prior commitment is to reduce tariffs across the board then Australia is not going to benefit much from your commitment. So there is that asymmetry between the winners and the losers. I know that the question was raised before, but I think it is an important one.

Speaker: On the broad point that you made about the system moving to cover deeper integration beyond the GATT which just dealt with border barriers towards these rules, your point is well taken. That is what is motivating me to think about mechanisms in which the system doesn't use

retaliation in order to unwind itself. There is a danger in which these very complex rules become pretexts for a large amount of retaliation, so in fact we lose the gains we made in the GATT by moving in these other rules-based areas. It also comes back to a point that was made earlier. I think that these are agreements that were bargained by countries from an economic standpoint and leave much to be desired. I think it would be useful if economists paid more attention to the details of the rules. For instance, one specific way, which I didn't have time to go into, it turns out that the system deals with export subsidies in a uniquely different way than it deals with all other violations. As an economist, I have trouble understanding why an export subsidy is so much worse than a tariff. In fact, you could almost just reverse the sign in a general equilibrium framework and they will translate into one another. So this notion doesn't have a firm economic foundation, yet it's enshrined in the rules. That's why I was driven to look at the system and to think about a more rational mechanism. By the way, there is also a problem of a mismatch between the adjudication and the legislation. The judicial system can function very efficiently and come up with rulings, but we have a negotiating system that takes 8 years to sign agreements. There is a concern that this mismatch will put a lot of pressure on the judges to read into the rules. Normally in the domestic system if the courts do something the parliament doesn't agree with, parliament can just rectify the situation. In the WTO there is a mismatch.

Now, I don't believe there is a huge danger of a country not honoring its contingent liberalization commitments. But certainly a failure to honor the prior commitment could be regarded as such an egregious action that you could think of some penalty in order to make sure compliance takes place. I guess the last point is a fundamental one that has to do with the asymmetry of the benefits. I think it is a flaw that you've identified.

Moderator: I must say that whether it is survival of the fittest or the most powerful, one thing that was said, that I think is very true, is that you've got to be smart. If you're smart, competent and know what you're doing in negotiating your agreements and if you know the exact details of rules of the system, you can do very well even if you're not a big, powerful country. It's unfortunate that sometimes smaller countries tend to be less smart and less prepared but that

should not be the case. Small countries, if they are smart, can do very well. That's the reason why we have the pleasure of having Dr. Lawrence with us, to know more about the system, the rules, the flaws and benefits of the system so we can use it to our benefit.

List of Attendees

Abbas Helmy
Managing Director, Concord International Investment, Egypt Office

Adel A. Bishai
Professor of International Economics, American University in Cairo (AUC)

Ahmed El-Dersh
Former Minister of Planning and International Cooperation

Ahmed Farouk Ghoneim
Deputy Director, Center for Economic and Financial Research and Studies

Ahmed Gheith
Deputy Editor-in-Chief, Middle East News Agency

Alaa Abou-Alam
Senior Advisor, Arab Contractors

Amina Ghanem
Economist and Senior Assistant to the Minister, Ministry of Foreign Trade

Aziza Helmy
Office of Economic Analysis and Policy, USAID Cairo Mission

Bahieldin Elibrachy
Managing Partner, El Ibrachy and Dermarkar Co.

Essam Darwish
Project Leader and Team Coordinator, Social Fund for Development

Gerry Mallory
Third Secretary of Trade, American Embassy

Gouda Abdel-Khalek
Professor of Economics, Faculty of Economics and Political Science

Hany A. Tawfik
Chairman, International Investors

Hassan El- Kamhawi
Journalist, Al Ahram Al Iktisadi

Hassan El-Hayawan
Chairman, Integrated Financial Services (Integra)

Heba El Kodsi
Journalist, Al Shark al Awasat Newspaper

Ingy Tawakol
Journalist, Akhbar El Youm

James Norris
Chief of Party, TAPR

Khaled Sweilam
American Chamber of Commerce in Egypt

Mahmood Ayub
Country Director for Egypt, The World Bank

Moatassem Rashed
Economic Consultant, General Authority for Investment and Free Zones

Mohamed Abdel Khalek Hassouna
Attorney at Law, Hassouna and Abou Ali Law Office

Mohamed Kassem
Chairman, World Trading Co.

Mohamed Taymour
Chairman, Egyptian Financial Group (EFG-Hermes) and ECES Member

Mona El Garf
Professor, Cairo University

Nagui El Fayoumi
Executive Director and Board Member, The Egyptian Exporters Association (Expolink)

Omar Mohanna
Chairman, Global Protection and ECES Honorary Treasurer

Reham Soliman
Economic Trade Specialist, American Embassy

Robert Newton
Ambassador, Embassy of Australia

Samir Hamza
Partner, Helmy, Hamza and Partners (Baker and McKenzie Law Firm)

Shaymaa Medhat
Ministry of Industry

Taher Helmy
Partner, Helmy, Hamza and Partners (Baker and McKenzie Law Firm) and ECES Chairman

Yasser Sobhi
Journalist, Al Ahram Newspaper

REFERENCES

Bagwell, K. and R. Staiger. 1997. *An Economic Theory of GATT*. Cambridge, National Bureau of Economic Research.

Bhagwati, J. 1991. *The World Trading System at Risk*. Princeton, Princeton University Press.

Bown, C. P. 2003. O*n the Economic Success of GATT/WTO Dispute Settlement*. Brandeis University.

Bown, C. P. Forthcoming. "Trade Disputes and the Implementation of Protection under the GATT: An Empirical Assessment." *Journal of International Economics*.

Breuss, F. 2002. *WTO Dispute Settlement from an Economic Perspective: More Failure than Success?* Vienna University of Economics and Business Administration.

Brimeyer, B. L. 2001. "Bananas, Beef and Compliance in the World Trade Organization: The Inability of the WTO Dispute Settlement Process to Achieve Compliance from Superpower Nations." *Minnesota Journal of Global Trade* 10 (133).

Charnovitz, S. 2001. "Rethinking Trade Sanctions." *American Journal of International Law* 95: 792:832.

Dam, K. W. 1970. *The GATT: Law and International Economic Organization*. Chicago, University of Chicago Press.

Ethier, W. 2001a. "Liberalization." *European Journal of Political Economy* 17 (2): 209-232.

Ethier, W. 2001b. *Punishments and Dispute Settlement in Trade Agreements*. Copenhagen, EPRU.

Hudec, R. E. 1993. *Enforcing International Trade Law*: *The Evolution of the Modern GATT Legal System*. Salem, N.H., Butterworth Legal Publishers.

Hudec, R. E. 2002. "The Adequacy of WTO Dispute Settlement Remedies." In *Development, Trade and the WTO: A Handbook*, B. M. Hoekman, A. Mattoo and P. English (eds.). Washington DC, The World Bank.: 81-92.

International Financial Advisory Commission (IFAC). 2001. Report of the IFAC. Washington D.C., United States Congress.

Jackson, J. H. 1969. *World Trade and the Law of GATT*. Indianapolis, Bobbs-Merrill.

Johnson, H. G. 1965. "An Economic Theory of Protectionism, Tariff Bargaining and the Formation of Customs Unions." *Journal of Political Economy* 73 (3): 256-283.

Krasner, S. D. 2001. "Sovereignty." *Foreign Policy* (122): 20-29.

Krugman, P. R. 1997. "What Should Trade Negotiators Negotiate About?" *Journal of Economic Literature* XXXV(March): 113-120.

Ludema, R. 1990. *Optimal International Trade Agreements and Dispute Settlement Procedures*. London, Ontario, University of Western Ontario.

Mavroidis, P. C. 2000. "Remedies in the WTO Legal System: Between a Rock and a Hard Place." *European Journal of International Law* 11(4): 763-814.

Pauwelyn, J. 2000. "Enforcement and Countermeasures in the WTO: Rules and Rules – Toward a More Collective Approach." *American Journal of International Law* 2 (April): 335-47.

Schwartz, W. F. and A. O. Sykes. 2002. *The Economic Structure of Renegotiation and Dispute Resolution in the WTO/GATT System*. The University of Chicago Law School.

Staiger, R. 1995. "International Rules and Institutions for Trade Policy." In *Handbook of International Economics*. G. M. Grossman and K. Rogoff (eds.). Amsterdam, Elsevier. 3: 1495-1551.